

San Carlos Apache Tribe



Program Authority Application under Clean
Water Act Sections 303 Water Quality Standards
and Section 401 Water Quality Certification for
the San Carlos Apache Tribe of the San Carlos
Reservation, Arizona

Prepared by

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Prepared for

Loretta Stone, Director
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Amended March 31, 2016

SAN CARLOS APACHE TRIBE

San Carlos Avenue
P.O. Box 0
San Carlos, Arizona 85550
Phone (928) 475-2361
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Terry Rambler
Tribal Chairman

Tao Etpison
Vice-Chairman



March 31, 2016

Mr. Jared Blumenfeld
Acting Regional Administrator
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Dear Regional Administrator Blumenfeld:

This letter transmits the San Carlos Apache Tribe's application for program authority in accordance with the Federal Water Pollution Control Act ("Clean Water Act") Section 518, for purposes of establishing water quality standards and issuing water quality certifications under Clean Water Act Sections 303 and 401, respectively (33 U.S.C. §§1313 and 1341). Please also provide a review and approval of our Tribally-approved water quality standards that are enclosed as an appendix.

Your review and approval would be gratefully appreciated. If you have any questions regarding this authorization request, please contact me at (928) 475-2361 or our Environmental Director, Ms. Loretta Stone, at (928) 475-2218.

Sincerely,

A handwritten signature in blue ink, appearing to be "Terry Rambler", written over a horizontal line.

Terry Rambler
Chairman

cc: Tao Etpison, Vice Chairman
Members of the Council
Loretta Stone, Environmental Director
Alexander Richie, Attorney General
Loretta Vanegas, EPA Project Officer (WTR-10)
Stephen W. Johnson, Ph.D., WQEI
Joe Sparks, Sparks & Assoc.

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Appendix A Federal Recognition of the San Carlos Apache Tribe

Appendix B San Carlos Apache Reservation Map

Appendix C Amended Constitution and Bylaws of the San Carlos Apache Tribe of Arizona

Appendix D Resumes of the San Carlos Apache EPA Staff and Water Quality Consultant

Appendix E Water Quality Standards & Regulations for the San Carlos Apache Reservation

1.0 Purpose

The purpose of this program authority application is to qualify the San Carlos Apache Tribe of the San Carlos Reservation, Arizona (herein referred to as *San Carlos Apache Tribe*) for program approval under Clean Water Act Section 303 Water Quality Standards and Section 401 Water Quality Certification within the San Carlos Apache Reservation pursuant to Section 518(e) of the Water Quality Act of 1987.

**SAN CARLOS APACHE TRIBE
SAN CARLOS APACHE INDIAN RESERVATION
SAN CARLOS, ARIZONA**

RESOLUTION

NO. DC-13-278

(Adopting Water Quality Standards)

WHEREAS, the San Carlos Apache Tribe ("Tribe") is a federally recognized Indian Tribe organized pursuant to the provisions of Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984); and

WHEREAS, the Tribal Council has the authority, among other things, to "represent the Tribe and act in all matters that concern the welfare of the Tribe, and to make decisions not inconsistent with or contrary to [the Tribe's] Constitution and Bylaws," pursuant to Article V, Section 1(a) of the Amended Constitution and By-Laws of the San Carlos Apache Tribe; and

WHEREAS, the federal Clean Water Act of 1972 (33 U.S.C. §1251, *et seq.* as amended) establishes the basis structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters, including those occurring on tribal reservation lands; and

WHEREAS, Sections 518 and 303 of the federal Clean Water Act allow Tribes to carry out water quality standards ("WQS") functions that pertain to the management and protection of water resources within a reservation and to have authority to regulate water quality; and

WHEREAS, the Tribe has the capability of carrying out the functions of an effective WQS program by and through the Tribe's Environmental Protection Agency ("TEPA"); and

WHEREAS, the Executive Director of TEPA this day presents a proposed Water Quality Standards, as attached and incorporated by this reference; and

WHEREAS, the Tribal Council finds that the proposed WQS will provide further means to ensure water quality standards on the San Carlos Apache Reservation.

BE IT RESOLVED by the Tribal Council of the San Carlos Apache Tribe that the Water Quality Standards, as attached, are hereby approved.

BE IT FURTHER RESOLVED by the Tribal Council of the San Carlos Apache Tribe that the Chairman, or in his absence, the Vice Chairman, or designee, is hereby authorized to execute any and all documents necessary to effectuate the intent of this Resolution.

CERTIFICATION

I, the undersigned, Secretary of the San Carlos Apache Tribal Council, hereby certify that the Council is presently composed of eleven (11) members, of whom seven (7), constituting a quorum, were present at a Regular Council meeting hereto held on the 3rd day of December 2013, and that the foregoing Resolution No. DC-13-278 was duly adopted by a vote of FOR 6; OPPOSED 0; ABSTAIN 0; of the Tribal Council pursuant to Article V, Section 1(a) of the Amended Constitution and Bylaws of the San Carlos Apache Tribe, effective February 24, 1954.



Katrina Talkalai, Tribal Secretary
SAN CARLOS APACHE TRIBAL COUNCIL

2.0 Federal Recognition

The San Carlos Apache Tribe of the San Carlos Reservation, Arizona (San Carlos Apache Tribe) is a federally recognized Indian Tribe as listed in the Federal Register Part IV U.S. Department of the Interior (*Appendix A*).

3.0 Contact Information Regarding This Program Authority Application

3.1 San Carlos Apache Tribe Council Members

San Carlos Tribal Council Members at the time of this application are as follows.

- Terry Rambler, Chairman
- Tao Etpison, Vice Chairman
- Jonathan Kitcheyan, Bylas Councilman
- Allred Pike, Jr., Bylas Councilman
- Alicia Cadmus, Bylas Councilwoman
- Valesquez Sneezy, Sr., Gilson Wash Councilman
- Simon Hooke, Gilson Wash Councilman
- Fred Ferreira, Peridot Councilman
- Wendsler Nosie, Sr. Peridot Councilman
- Bernadette Goode, Seven Mile Wash Councilwoman
- Mitchell Hoffman, Seven Mile Wash Councilman

3.2 San Carlos Apache Tribe Address and Phone Number

The mailing address and phone numbers of the San Carlos Apache Tribe are as follows.

San Carlos Apache Tribe
P.O. Drawer 0
#3 San Carlos Avenue
San Carlos, Arizona 85550
(928) 475-2361
(928) 475-2567 (fax)

3.3 Representatives for this Program Authority Application

The following individuals are representatives for this application.

Mr. Terry Rambler
Chairman
San Carlos Apache Tribe
P.O. Box 0
#3 San Carlos Avenue
San Carlos, Arizona 85550
(928) 475-2361

Mr. Tao Eptison
Vice Chairman
San Carlos Apache Tribe
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Ms. Loretta Stone
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Mr. Alexander B. Ritchie
Attorney General
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Dr. Stephen Johnson, Ph.D.
Water Quality Hydrologist
Water Quality Environmental, Inc.
PO Box 250
Del Mar, CA 92014
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4.0 Information Regarding the San Carlos Apache Reservation

4.1 General Reservation Information

The San Carlos Apache Reservation consists of 1,854,396 acres (2,854 square miles) spanning Gila, Graham, and Pinal counties in southeastern Arizona (*Appendix B*). The western border of the San Carlos Apache Reservation is situated approximately 4 miles east of Globe, Arizona, and the northern edge is bordered by the White Mountain Apache Indian Reservation. The majority of the San Carlos Apache Reservation is used as rangeland; the remaining area is occupied by communities and businesses. The San Carlos Apache Reservation itself is divided into four districts: Bylas, Gilson, Peridot, and Seven Mile.

The geography of the San Carlos Apache Reservation varies, ranging in elevation from 2,000 to 8,000 feet above mean sea level. Areas of desert, plains, pine forests, and high mountain reaches exist throughout the San Carlos Apache Reservation. The average annual precipitation on the San Carlos Apache Reservation is 17.5 inches. Over one-third of the San Carlos Apache Reservation is forested or wooded with ponderosa pine, alligator juniper, oak, and piñon pine. The lower desert areas of the San Carlos Apache Reservation are populated with desert scrub, including Salt Cedar, Creosote, Busage, and Crucifixion-thorn. San Carlos Apache Reservation lands also are rich in minerals, such as peridot, copper, and fire agate.

The San Carlos Apache Reservation is home to approximately 250 bird species and 75 mammal species, including elk, Rocky Mountain bighorn sheep, mountain lions, black bears, antelope, javalina, cottontail rabbits, foxes, bobcats, coyotes, and Coue's deer. A number of protected species, such as bald eagles, spotted owls, peregrine falcons, and desert tortoises, also have been sighted on the San Carlos Apache Reservation. Many Tribal water bodies of water are stocked with trout, bass, channel catfish, crappie, blue gill, flathead catfish, and green sunfish.

4.2 Waterbodies on the San Carlos Apache Reservation

There are five significant publicly owned lakes on the San Carlos Apache Reservation: San Carlos Lake, Seneca Lake, Dry Lake, Point of Pines Lake, and Talkalai Lake. San Carlos Lake is the largest, containing 19,985 acres of water when full. Formed by the construction of the

Coolidge Dam in 1924, it is the largest body of water in the State of Arizona. Lake water is delivered downstream to the San Carlos Drainage District and used to irrigate lands within the Gila River Indian Community, which is located along the Gila River approximately 90 miles downstream of San Carlos Lake.

There also are seven rivers/streams on the San Carlos Apache Reservation: Gila River, San Carlos River, Black River, Blue River, Salt River, Bonita Creek, Eagle Creek, and Bear Wallow Creek. In addition, there are more than 74 small ponds or stock tanks. In total, there are approximately 336 miles of perennial streams on the San Carlos Apache Reservation, as well as 3,825 miles of intermittent and ephemeral streams. Many of the lakes and stock tanks on the San Carlos Apache Reservation are stocked for fishing and are used for recreational purposes. A total of 38,728 acres of freshwater wetlands are associated with rivers, lakes, and stock tanks.

4.3 Fee Lands and Lease Lands on the San Carlos Apache Reservation

There are no fee lands or lease lands on the San Carlos Apache Reservation. ✓

5.0 Substantial San Carlos Apache Tribal Governmental Duties and Powers

5.1 Tribal Constitution

The San Carlos Apache Tribe is governed by the San Carlos Tribal Council, as described in the Indian Reorganization Act of 1934 and the 1954 Amended Constitution and Bylaws of the San Carlos Apache Tribe of Arizona (*Appendix C*). The Amended Constitution and Bylaws provide the San Carlos Tribal Council with powers of self-government, including powers by appropriate code, ordinance, or resolution.

The Council consists of a Chairman and Vice Chairman (each elected for terms of 4 years) and 9 council members (elected for staggered terms of 4 years). Three of the nine members are elected from the Bylas District, two from the Gilson District, two from the Peridot District, and two from the Seven Mile District. All adult Tribal members over 25 years of age are eligible to be elected into the Council by popular vote.

5.2 Tribal Organization

The Tribal Council is responsible for approving resolutions and ordinances, such as Tribal approval of water quality standards. The San Carlos Apache EPA is responsible for developing and administering both the water quality standards and water quality certifications.

5.3 Tribal Capability

The San Carlos Apache EPA administers the San Carlos Apache Tribe's Water Pollution Control Program and is responsible for protecting the environment and public health on the San Carlos Apache Reservation. Resumes for the San Carlos Apache EPA staff and contractual consultants are presented in *Appendix D*. The experience of staff and contractual consultants contained in these resumes provides the capability needed for the San Carlos Apache Tribe to administer the water quality standards program and water quality certifications.

5.4 Tribal Authority to Protect Water Resources

Water quality and quantity are critical to the health and welfare of the San Carlos Apache Tribe. Tribal water quality standards for surface waters, including wetlands, and ground water have been developed for the San Carlos Apache Reservation (*Appendix E*). The water quality standards were Tribally-approved by unanimous resolution (No. DC-13-278) on December 13, 2013. The following information is taken from the Tribally-approved water quality standards.

The purposes of the Water Quality Standards for the San Carlos Apache Reservation are outlined below:

- 1. To designate the existing uses for which Tribal waters of the San Carlos Apache Reservation shall be protected*
- 2. To prescribe water quality standards (narrative and numeric) imposed in order to sustain designated uses of Tribal waters*
- 3. To assure that degradation of existing water quality does not occur*
- 4. To promote the social welfare and economic well-being of the San Carlos Apache Tribe*

The proposed water quality standards apply to all Tribal waters that are contained in or flow in or through the San Carlos Apache Reservation.

At a minimum, all Tribal waters must have designated uses that meet the goals of Section 101(a)(2) of the CWA unless the results of a use attainability analysis (UAA) show that the CWA Section 101(a)(2) goals cannot be achieved. These goals include providing for the protection and propagation of fish, shellfish, and wildlife and for recreation in and on the water.

Designated uses of Tribal waters, including wetlands, are listed below:

- *Agricultural irrigation (AgI)*
- *Agricultural livestock watering (AgL)*
- *Aquatic and wildlife (cold water fishery) (A&Wc)*
- *Aquatic and wildlife (ephemeral) (A&We)*
- *Aquatic and wildlife (warm water fishery) (A&Ww)*
- *Cultural full body contact (CFB)*
- *Domestic water source (DWS)*
- *Fish consumption (FC)*
- *Full body contact (FBC)*
- *Partial body contact (PBC)*

The following Tribal waters are proposed for classification as unique waters:

- *Bonita Creek (native fishery)*
- *Black River (threatened and endangered species: Apache Trout propagation)*
- *All Tribal springs (all springs are considered sacred)*

5.5 Tribal Importance of Water

It is the San Carlos Apache Tribe's belief that the land, water, air, and wildlife are precious, and the preservation and protection of these resources is of primary importance. It is a principal goal of the San Carlos Apache Tribe *to preserve and expand its land base while protecting, developing, and utilizing natural resources* according to the Strategic Plan for the Integration of Economic Development, Human Resources, and Natural Resource Management on the San Carlos Apache Reservation.

A number of important cultural traditions are still practiced on the San Carlos Apache Reservation. One of these important cultural traditions is the Apache Sunrise Ceremony, which signifies a young girl's entrance into womanhood. Sweat baths are used for cleansing the body and spirit - a common practice used during the Sunrise Ceremony by the medicine men, spirit

dancers, and other Tribal men. Another custom that continues to be passed down from mother to daughter and is dependent upon the natural resources of the San Carlos Apache Reservation is the art of basket weaving. The two types of baskets crafted on the San Carlos Apache Reservation are the jug or *tus* basket (woven from sumac or squawberry twigs and sealed with a piñon pitch glaze) and the burden basket (supported by a headband worn on the weaver's forehead; woven from willow, cottonwood, and wild mulberry; and decorated with buckskin straps dangling small metal cones). Protecting and preserving wetland resources through the San Carlos Apache Tribe's proposed water quality standards supports cultural/ceremonial activities as a beneficial use of a Tribal water thus ensuring that these cultural traditions can continue for future generations.

5.6 Tribal Authority over Human Activities on the San Carlos Apache Reservation

The San Carlos Apache Tribe has authority over Tribal Member activities on the San Carlos Apache Reservation. A complete description of the San Carlos Apache Tribe's governmental functions, ordinances, codes, and judicial systems can be found in the San Carlos Apache Tribe's initial application for program authority under the Clean Water Act Section 106 Water Pollution Control Program on file at EPA Region 9's offices.

Although the Supreme Court ruled in *Nevada v. Hicks* that tribal courts do not have jurisdiction over state officers enforcing state law on trust lands, that decision does not preclude or diminish the exercise of San Carlos Apache Tribal authority for regulating nonmember activities related to water quality on-reservation, considering that the analysis in *Nevada v. Hicks* involved a crime committed in an off-reservation location.

5.7 Tribal Water Quality Certification Program

The Tribal Water Quality Certification Program exercises the Tribal authority to administer EPA's CWA Section 401 Water Quality Certification program. The Tribal Water Quality Certification Program is administered by the San Carlos Apache EPA. The San Carlos Apache EPA is responsible for conducting a technical review of materials submitted to the San Carlos Apache Tribe by a permittee requesting a water quality certification for a proposed activity or renewal of an existing activity that has the potential to degrade Tribal water quality. The San Carlos Apache EPA provides a written decision in the form of a water quality certification approval, denial, or approval with conditions for a requested water quality certification. The San Carlos Apache EPA is responsible for issuing the water quality certification in a written letter to the requesting entity. An appeal to a water quality certification by the requesting entity is handled through the San Carlos Apache Tribal Council.

